

**AUSTIN POLICE DEPARTMENT
GENERAL ORDERS, POLICIES AND PROCEDURES
Part B – Enforcement Operations**

DOCUMENT TITLE: Interviews, Stops and Arrests **DOCUMENT #:** B107

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B107 Interviews, Stops and Arrests

The non-consensual interruption of a person's right to freely move about the City is viewed as a very significant challenge to his/her Constitutional rights. Officers of this Department will ensure that the stopping and/or detaining of residents is based upon solid legal principles that conform with their training in arrest, search, and seizure. Any other motivation for such actions is strictly prohibited.

.01 Types of Resident Contacts

Officers dealing with persons must be aware of the type of contact in which they are engaged, and its legal significance. There are three types of duty-related contacts with persons made by police officers. In terms of legal significance, they are arranged from least to most intrusive as follows:

- A. Interviews;
- B. Stops; and
- C. Arrests.

.02 Explanations to Persons

- A. Officers shall act with as much restraint and courtesy toward persons interviewed, stopped or arrested as is possible under the circumstances.
- B. The initiating officer shall explain the reason for the contact and, when practical, the purpose of anticipated police action.
- C. Officers shall identify themselves when they initiate a duty-related contact with a person, unless their identity is obvious.

.03 Interviews

Officers are encouraged to initiate interviews with residents of the community in order to gain more thorough knowledge and become an integral part of their beats and the community.

- A. Police officers may talk to a person at anytime, for any reason, as part of their performance of duty.
- B. An interview should be conversational and not confrontational.
- C. An interview is not a stop or arrest. There is no intent to inhibit any of the freedoms of a person. The person has the right to:
 - 1. Fail to respond to the officer;
 - 2. Refuse to identify him/herself; and
 - 3. Walk away from the officer.
- D. When undocumented aliens who are victims or witnesses of a crime are interviewed, they should be told that the INS will not routinely be notified, in compliance with USC Title 8 Section 1373.
- E. Negative inferences will not be made based on a resident's refusal to cooperate in the interview.
- F. Photographs of residents will not be taken during interviews without their permission.

.04 Stops

Stops are "seizures" under the Fourth Amendment. An officer may stop and question a person when the officer has reasonable suspicion that the person may be involved in past, present or future criminal activity. Reasonable suspicion is less than the probable cause needed for an

arrest or search.

- A. Before officers stop a person for questioning, they must be aware of specific suspicious conduct or circumstances justifying that stop. Factors might include, but are not limited to:
 - 1. Evasive or furtive movements;
 - 2. Similarities in appearance to a "wanted" person;
 - 3. A known felony record;
 - 4. Actions, clothing, vehicle or presence is unusual at the time or place; and
 - 5. Observations, or information received which links a person to criminal activity.
- B. Officers will not stop persons for the sole purpose of determining immigration status.
- C. Officers will cooperate with INS Agents in INS law enforcement activity involving the identification and targeting of criminally active and violent undocumented alien gang members.
- D. Officers should rely on their training and experience and must be able to articulate a reasonable suspicion for an investigatory stop.
- E. Officers executing a lawful stop should be aware that if the person flees, he/she is "evading detention," which is at least a Class B misdemeanor under the provisions of the Texas Penal Code, Section 38.04.
- F. Officers may detain persons they lawfully stop for a reasonable length of time in an attempt to:
 - 1. Verify their identification. (Officers should be familiar with Penal Code Section 38.02. Persons are not required to identify themselves unless they are under arrest; however, if they are legally detained and choose to identify themselves, they must do so accurately.)
 - 2. Account for their conduct.
 - 3. Account for their presence.
 - 4. Discover whether a crime occurred.
 - 5. Determine person's involvement.
- G. An officer shall release a person from an investigatory stop if:
 - 1. The person eliminates the officer's reasonable suspicion of criminal involvement; or
 - 2. The officer fails to develop the probable cause necessary to arrest within a reasonable time.

.05 Admissibility of Statements

- A. Officers need not inform a suspect of his/her "Miranda" rights if the interview remains brief, casual, relatively neutral, and non-coercive. Oral statements/confessions made in non-custodial interviews, where the subject is free to leave, are admissible if the statement is given voluntarily and not as a result of coercion, threats, or promises of any kind.
 - 1. Custody can be construed as actual or constructive; therefore, it is incumbent upon the officer to be conscious of the subject's belief about whether or not he/she is free to leave. Ordinarily, an officer will allow a subject to leave after taking the non-custodial statement/confession. A warrant can be obtained at a later time to take the subject into custody.
 - 2. However, there may be occasions when information is disclosed that changes the complexion of the interview to a custodial interrogation, where the subject becomes the focus of the investigation and the facts and circumstances of the case dictate that he or she is no longer free to leave.
- B. When questioning begins to focus on the person stopped, becoming an accusatory interrogation regarding a specific offense, personnel will inform the person of his/her Miranda rights and treat the remainder of the interview as a custodial interrogation.
 - 1. Once the person requests to speak with an attorney or indicates a desire for legal representation, the interview/interrogation will be discontinued at that point. Should the person request to continue the interview/interrogation after